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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,743	01/30/2004	Christian Bauer	713-1009	5720
33712	7590	06/06/2006	EXAMINER	
LOWE, HAUPTMAN, GILMAN & BERNER, LLP (ITW)			REESE, DAVID C	
1700 DIAGONAL ROAD			ART UNIT	
SUITE 300			PAPER NUMBER	
ALEXANDRIA, VA 22314			3677	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/767,743

Applicant(s)

BAUER, CHRISTIAN

Examiner

David C. Reese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-17, 19, 20 and 28-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31-33 is/are allowed.
- 6) ☒ Claim(s) 6-17, 19-20, 28-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

THIS NON-FINAL ACTION IS RESPONSIVE TO THE AMENDMENT FILED 2/1/2006.

- Claims 1-5, 18, 21-27 are canceled.
- Claims 28-33 were added.
- Claims 6, 9, 13, and 16 were amended.
- Claims 6-17, 19-20, 28-33 are pending.
- A New Drawing was filed for entry.

***Drawings***

[1] The drawing(s) were previously objected for informalities. In view of Applicant's new drawing(s) on 2/1/2006, all previous objection(s) to the drawings have been withdrawn. Accordingly, the new drawing has been entered.

***Specification***

[2] The disclosure was previously objected to for informalities. Applicant has successfully addressed these issues in the amendment filed on 2/1/2006. Accordingly, the objection(s) to the specification have been withdrawn, and the applicant's amendment to the specification has been entered.

***Claim Rejections - 35 USC § 112***

[3] Applicant has addressed all rejections under 35 USC § 112 to the Claims in the amendment filed 2/1/2006. Accordingly, the Examiner has withdrawn the 35 USC § 112 rejections.

***Claim Rejections - 35 USC § 102***

[4] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[5] Claims 6-10, 12-16, 19-20, and 28-30 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Sato, US- 4,927,306, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Sato is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 6, Sato teaches of a fastener (1, see figures below) adapted to be inserted into an opening of a sheet member (11) having opposite upper (2) and lower surfaces (3), said fastener (1) comprising:

a shank (3) extending in an axial direction of said grommet and having opposite upper (2) and lower ends (1);

at least a locking tab (6a) coupled to said shank (3) between the upper (2) and lower ends (3) of said shank (3) and radially flexible relative to said shank (3); and

a head (2) connected to the upper end of said shank (3) and comprising a flange (2) adapted to engage the upper surface of the sheet member (11) when said shank (3) and said locking tab (6a) are snapped into the opening (12);

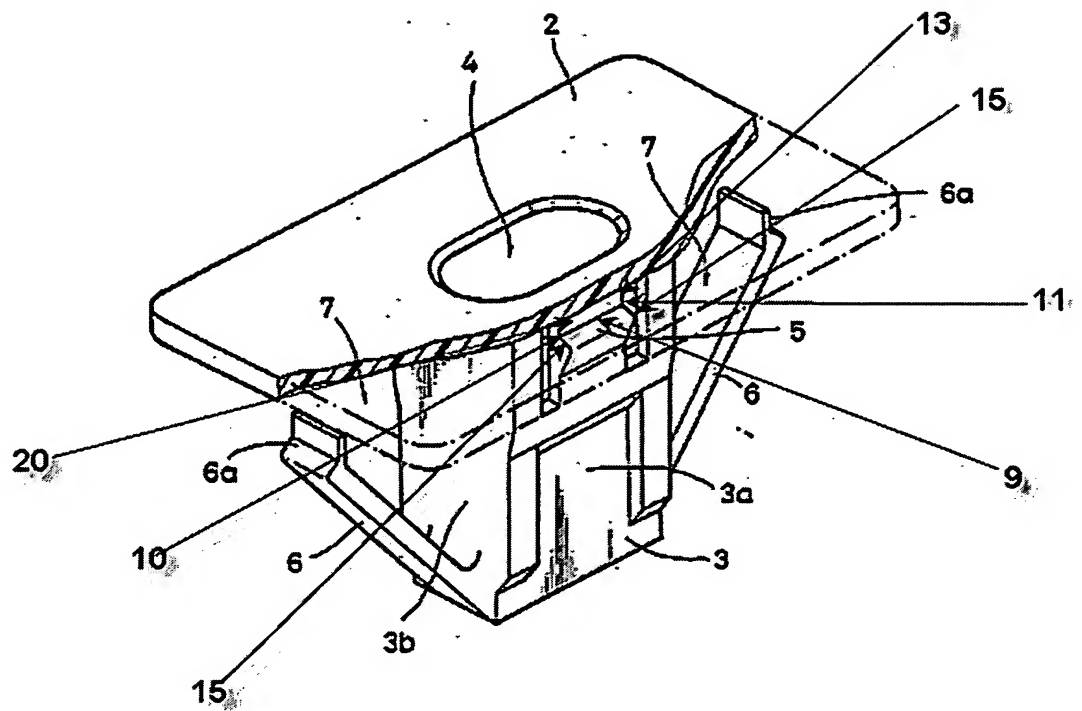
wherein said shank (3) comprises

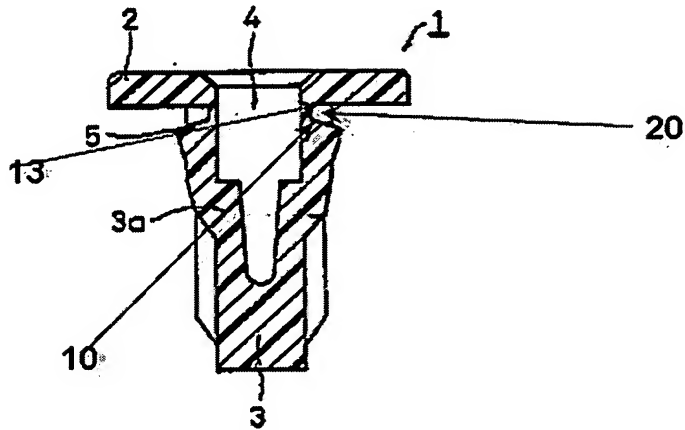
a shoulder (5) in a region adjacent the head (2), said shoulder (5) being adapted to be placed below an edge of the opening (12) when said shank (3) is moved transversely to said axial direction after being snapped into the opening, thereby preventing withdrawal of said shank (3) from said opening (12); and

an outer surface section (20) inclined relative to the axial direction and connecting said shoulder (5) and the lower surface of said head (2), for engaging the edge of the opening (12) and drawing said shank (3) into the opening (12) when said shank (3) is moved transversely to said axial direction; and

wherein, when said shank (3) is seen in said axial direction, said shoulder (5) is confined between an outer edge (15) of said shank (3) and a first boundary line (9) intersecting said outer edge (15) at first (10) and second points (11), and said outer surface section (20) is confined between said first boundary line (9) and a second boundary line (13) converging toward the first point (10).

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Re: Claim 7, wherein the outer surface section (20) is planar, and the shoulder (5) is planar and perpendicular to the axial direction.

Re: Claim 8, wherein said locking tab (6a) has a lower end (6) directly connected to said shank (3) and an upper end which is free of any direct attachment with said shank (3) and is connected to said shank (3) exclusively via the lower end (6) of said locking tab.

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Re: Claim 9, wherein said shank (3), has a rectangular cross section (Fig. 5) taken perpendicular to said axial direction, and

the shoulder (5) is located in a corner portion of said rectangular cross section, longitudinally extends toward an adjacent corner portion of said rectangular cross section, and has a width that decreases along said longitudinal extent.

Re: Claim 10, wherein the region of said shank with said shoulder (5) is less radially flexible than said locking tab (6a).

Re: Claim 12, wherein said outer surface section (20) is closer to said head (2) than an uppermost surface of said flexible locking tab (6a).

Re: Claim 13, wherein said first (9) and second (13) boundary lines converge at said first point (10).

Re: Claim 14, wherein said shank (3) has an approximately rectangular cross section (Fig. 5), taken perpendicular to said axial direction in the region adjacent to said head (2), and said shoulder (5) and said outer surface (20) are located within and in a corner portion of the approximately rectangular cross section (Fig. 5).

Re: Claim 15, wherein said locking tab (6a) projects radially outwardly from a middle of a side of the approximately rectangular cross section (Fig. 5).

Re: Claim 16, wherein said shank (3) comprises at least two said shoulders (5) and two said outer surface sections (20) being located in two diagonally opposite corner portions of said shank (3).

Re: Claim 19, wherein said shank (3) and said head (2) together define an axial bore (4) adapted to receive and retain therein an elongated fastening element.



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Re: Claim 20, comprising a plurality of said flexible locking tabs (6a), wherein said shoulder (5) is not part of any of said locking tabs (6a).

Re: Claim 28, wherein said first (9) and second (13) boundary lines are straight lines.

Re: Claim 29, wherein said first (9) and second (13) boundary lines converge toward each other and define therebetween an acute angle.

Re: Claim 30, wherein said first (9) boundary line and the outer edge (15) of shank define at said first point (10) another acute angle.

***Claim Rejections - 35 USC § 103***

[6] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[7] Claims 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato, US- 4,927,306, in view of Mizuno, US-6,560,819.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

As for Claim 11, Sato teaches that of the above claims.

The difference between the claim and Sato is the claim recites that the outer surface section extends radially inwardly. Mizuno discloses a grommet similar to that of Sato. In addition, Mizuno further teaches of a variety of inclined surfaces for an outer surface (Figs. 7A-7D). It would have been obvious to one of ordinary skill in the art, as well as art recognized equivalence, having the disclosures of Sato and Mizuno before him at the time the invention was made, to modify the shoulder of Sato (5) to include the structure of that as provided by Mizuno in his Fig. 7C. One would have been motivated to make such a combination because such a configuration of utilizing an inclined surface as proposed by one of embodiments by Mizuno, specifically of that shown in Fig. 7C would, as stated in col. 2, beginning with line 4, “that regardless of the thickness of the member being mounted, there is no possibility that the entire grommet can move axially.” Also, as stated by Mizuno in col. 1, line 65, “The inclined surfaces push a member being mounted in a upward direction and an upper surface of the member being mounted is brought into close contact with a flat back surface of the head”. This disclosed by Mizuno is in turn comparable to the purpose of said inclined surface in the applicant’s invention, the disclosure of which states “ensuring that the head gets into engagement with the support member side and produces a sufficient sealing action, as well as ensuring that the grommet, when under a tensile load, does not come loose from sheets of lesser thicknesses.”

It is further stated by the applicant that a specific problem with fasteners of the like is that “the distance between the shoulder and the underside of the head cannot be prevented from being larger than the thickness of the support member. This can cause the grommet, when under a load, to come loose from the support member”. The inclination provided by the shoulder, stated by the applicant, helps solve this problem. Mizuno, in the same light, provides a similar

disclosure indicating, as stated in the above paragraph, an emulative purpose of such an inclined surface, and since the reference addresses this narrow problem, a person seeking to solve that exact same problem would consult the references and apply their teachings together.

Re: Claim 17, Sato teaches wherein each of said shoulders (5) and outer surface (20) sections has an approximately triangular shape having a side which is not parallel (in view of Mizuno) with any side of the approximately rectangular cross section of said shank (3) and which is defined by at least one of said first (9) and second (13) boundary lines.

***Response to Arguments***

[8] Applicant's arguments filed 2/1/2006 regarding rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive. With regard to the amended subject matter, the examiner directs the applicant to the figures above showing how the claim language in the instant set of claims, when viewed with the broadest reasonable interpretation, are anticipated by the figures of Sato.

***Allowable Subject Matter***

[9] Claims 31-33 are allowed.

***Reasons for Allowance***

[10] The following is an examiner's statement of reasons for allowance: the prior art, either alone or in combination with corresponding limitations as stated above, fails to teach or disclose that the second boundary line intersects the second section at a third point; and that spacing between said first and second boundary lines decreases as the second boundary line extends from the third point toward the first point. Claims 32-33 are dependent upon allowable claim 31.

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***Conclusion***

**[11] THIS ACTION IS NON-FINAL**


**[12]** Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Reese  
Assistant Examiner  
Art Unit 3677

DCR

  
5/30/06

  
**ROBERT J. SANDY**  
**PRIMARY EXAMINER**